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Subject: delay reduction court rule amendments MCR 7.212

I am asking you to reject these proposed amendments for three reasons. First, they will decrease the quality of the briefs being filed (and, accordingly, the quality of the Court of Appeals opinions). As anyone who has written either a brief or an opinion knows, legal writing takes more than just sitting down and typing it out. Occasionally, it takes a little time to read the record, talk to the client, investigate outside the record, issue spot, and research. Oddly enough, these items do not always fall into place all that quickly (particularly outside investigation and issue spotting). Particularly since very few appellate practioners restrict their practices to only one appeal at a time, time becomes very precious. Sometimes, even the most industrious and efficient practitioner needs some extra time to do a good job. Cutting the times for appellants' and reply briefs (without any realistic time extentions) will necessarily reduce the quality of the briefs. In addition, since the Court of Appeals then takes as long as it does to hear the case (as pointed out below), the brief will be quite stale by the time that the case is heard. Plenty may have changed in the meantime. Of course, the more that has changed, the less helpful the brief. The less helpful the brief, the more work that the Court of Appeals has to do (or, the poorer the Court of Appeals opinion).

Second, the proposals are unreasonable. Although Michigan's time limits may look generous when compared to other jurisdictions, they are not particularly. I have yet to find another jurisdiction that practically refuses to allow extentions as the proposed rules would. Even the Sixth Circuit generously grants extentions (despite dire statements to the contrary). In other words, for all intents and purposes, this proposal just might very well make Michigan the most restrictive jurisdiction in this regard.

Even someone like myself who hardly ever asks for an extention and files virtually everything on time occasionally needs a little lattitute. My caseload varies from time to time. In addition, just like judges, I occasionally go on vacation. Unlike judges, however, I cannot just put off the work until I get back. (After all, no real sanction exists for a judge not doing his work. Under any circumstance, one certainly exists for me not doing my work.) At least a little bit of lattitude is needed to get through the tough times.

Third, these proposals will not work. As plenty of others have told you already, filing briefs earlier will not in the least reduce the amount of time that an appeal stays within the Court of Appeals. As we all know, for over ten years, the real backlog (the bottle neck) is the warehousing time. I constantly have my cases heard about 15 - 18 months after I file the appellee's brief. The parties filing their briefs earlier will not accomplish anything other than make the case sit around longer before they are heard.

Next, reducing the time for filing the reply brief does not affect anything either. As each of you already knows, a brief becomes ready for processing once the appellee's brief is filed (or its due date passes). The reply brief has absolutely nothing to do with it. Frankly, the proposol reducing this time completely mystifies me. It will accomplish absolutely nothing. It is counterproductive. Therefore, why do it?

In addition, eliminating stipulations is also counterproductive. A stipulation is a very efficient way to extend time. The parties need merely sign and file it. Otherwise, one party will have to file a motion--which takes far more court time--time that would be better spent trying to reduce the backlog. Someone on the court would actually have to read the motion and decide if it should be granted. The Court would then have to issue an order. How does this procedure in the least save any time?

In the end, for anything to work, the Court of Appeals will have to get its own house in order. Rather than proposing rules that shift the burden entirely to people who cannot solve the problem, that Court should do two things. First, it should go back to hearing 42 cases per case call rather than 33. This point really bothers me. Twenty years ago, when I was a law clerk, we had 42 cases per case call (with a vastly smaller backlog). Now, the Court has 33. How can that Court possibly say that it is serious about reducing the backlog if this number stays at 33? Isn't the obvious answer to eliminating the backlog to just do it?

Next, the Court of Appeals can eliminate a number of its make work policies. Unlike this Court, it refuses to accept answers that are filed late. Thus, the party filing an answer has to file a motion to have the answer accepted. In other words, if the answer shows up one day late, the Court of Appeals will send it back (even though no clerk or commissioner would even look at the matter for at least a few days, if not weeks or months). Then the party has to file a motion along with the answer. Then the Court will issue an order on this secondary motion. On the other hand, this Court operates just fine (as the Court of Appeals used to) with accepting late answers. The Court of Appeals' own staff wants rid of this rule. With policies like these, no wonder the Court of Appeals has a backlog while this Court does not.

Please reject these particular proposals.